



Natural Resources Conservation Service  
6013 Lakeside Blvd.  
Indianapolis, IN 46278

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January 11, 2007

**INDIANA BULLETIN IN NO. 300-7-12**

**SUBJECT:** LTP - NRCS Appeals Procedures

**Purpose:** To provide notice that the interim final NRCS Appeals Procedures, 7 CFR 614, issued in the Federal Register on May 16, 2006, is in effect, and to provide guidance on the changes that impact appeals in Indiana.

**Expiration Date:** September 30, 2007

**Background:** NRCS published a new interim final rule entitled NRCS Appeals Procedures, at 7 CFR 614, dated May 16, 2006. This rule should be used by all NRCS offices in issuing technical determinations or conservation program decisions.

The policy currently available in Conservation Programs Manual (CPM), Part 510, will be updated within the next few months. Until the CPM is updated, the regulation at 7 CFR 614, May 16, 2006, prevails regarding the NRCS Appeals Procedures.

The interim final rule provides subtle but important changes to the current appeal process. There are three categories of decision addressed by the rule, a preliminary technical determination, a final technical determination, and a program decision. Each has a slightly different appeal path. Additionally the rule clarifies that a participant must choose one avenue of appeal based on the particular decision type.

The rule also establishes the option for an informal hearing before the State Conservationist on Non-Title XII programs. The rule also requires a State Conservationist review of all reconsiderations/field visits if the decision remains adverse to the participant.

**Preliminary Technical Determinations:**

**All** technical determinations will be issued as preliminary. Preliminary Technical Determinations are not appealable. They become a final technical determination and appealable after 30 days if the producer takes no action. For Preliminary Technical Determinations the producer must be given the following options during notification of the determination.

1. Request a field visit/reconsideration by the local DC, or
2. Request mediation

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The producer must make the request to the NRCS official issuing the Preliminary Technical Determination within 30 days of receiving the notification, and can choose only *one* of the above.

**If a field visit/reconsideration is completed and the determination is still adverse to the producer, then the Agency record, including any information gathered during the field visit/reconsideration, must be sent to the State Conservationist for further reconsideration.** See Attachment C “Steps and Procedures for Reconsideration and Mediation of a Preliminary Technical Determination”, for further details on Preliminary Technical Determinations.

In Indiana, when a field visit/reconsideration is completed, the decision and Agency record for the Preliminary Technical Determination will be routed through the Area Conservationist to the State Conservationist, for review. The State Conservationist will issue the Final Technical Determination along with appeal rights within 30 days of receipt of the field review.

### **Final Technical Determinations:**

Final Technical Determinations are immediately appealable when delivered to the participant. For Final Technical Determinations the producer must be given the following options during notification of their appeal rights.

1. Appeal to the FSA County Committee for Title XII programs (Farm-bill programs, HEL/WC, EQIP, GRP, WHIP, etc.) **or**;
2. Appeal directly to NAD

The producer must file the appeal request in writing within 30 days of receiving notification of a Final Technical Determination and can choose only *one* of the above methods of appeal. The field office must be able to provide the State Office with the Agency Record within 2 working days of being requested and will be routed directly to the State Office Staff requesting the record.

### **Program Decisions:**

**All** Program Decisions are *final* the day they are received by the producer and as such are appealable immediately. Program Decisions are those decisions related to specific program eligibility, funding, ranking, or contract cancellation/ termination.

For Program Decisions the producer must be given the following options during notification of their appeal rights.

1. Informal hearing before the State Conservationist **or**;
2. Appeal to the FSA County Committee for Title XII programs (Farm-bill programs, HEL/WC, EQIP, GRP, WHIP, etc.) **or**;
3. Mediation, **or**;

#### 4. Appeal directly to NAD

The producer must file the appeal request in writing within 30 days of receiving notification of a Program Decision and can choose only *one* of the above methods of appeal. See Attachment B “Steps and Procedures for Appeal and Mediation of a Program Decision”, for further details on Program Decisions.

The changes in the appeal process necessitate a revision in the letters used for notification of a Preliminary Technical Determination, a Final Technical Determination, and a Program Decision. Appropriate sample letters are attached for field office use.

District Conservationists should thoroughly review the following documents attached to this bulletin:

- A. NRCS Appeals Procedures, 7 CFR 614, published May 16, 2006 (Interim Final Rule).
- B. Steps and Procedures for Appeal and Mediation of a Program Decision.
- C. Steps and Procedures for Reconsideration and Mediation of a Preliminary Technical Determination.
- D. Appeals Procedures Flowchart.
- E. FSA Appeals Procedures, 7 CFR Part 780.11 Appeals of NRCS determinations
- F. Preliminary Technical Determination Letter

Questions regarding procedures to follow for appealable decisions should be directed to Harold L. Thompson, Assistant State Conservationist (Programs), Joe Williams, Soil Conservationist (Programs), or Jim Dunaway, Soil Conservationist (Programs). Questions pertaining to technical aspects of the preliminary technical decision should be directed through Shannon Zezula, State Resource Conservationist.

/s/

JANE E. HARDISTY  
State Conservationist

Attachments